

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.Misc.No.71382-M of 2006

DATE OF DECISION: NOVEMBER 28, 2006

Arvind Kumar

...PETITIONER

VERSUS

State of Haryana

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.Vikas Kumar, Advocate,
for the petitioner.

...

Petitioner Arvind Kumar has filed this petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 404 dated 2.9.2006 registered under Section 376 IPC at Police Station Central Faridabad, District Faridabad.

I have heard the counsel for the petitioner and gone through the contents of the petition as well as the impugned order.

The aforesaid FIR has been registered against the petitioner on an application filed by Ruksar daughter of one J.N.Kaul, in which she stated that she was employed in a factory and on 17.8.2006, when she was going to her house after finishing her duties, then the petitioner, who is also an employee in the same factory, came from the side of Bata Chowk and took her on his motor-cycle to a deserted place where he forcibly committed rape upon her. Thereafter, the matter was reported to the police. The Additional Sessions Judge, Faridabad, keeping in view the nature of allegations against the petitioner, dismissed the application for grant of bail vide order dated October 26, 2006. Hence this petition.

Counsel for the petitioner submits that the petitioner was arrested and was remanded to judicial custody. On 29.9.2006, the remand of the accused was further extended up to 13.10.2006. On 13.10.2006, the accused was not produced by the jail authorities and production warrants were issued for 27.10.2006. On 27.10.2006, the accused was produced and

his judicial remand was further extended till 10.11.2006. Counsel contends that since on 13.10.2006 the accused was not produced in the court by the jail authorities, therefore, further extension of judicial remand was illegal and, thus, the petitioner is entitled for bail.

I do not find any substance in the aforesaid contention raised by the counsel for the petitioner. Under the Proviso to Section 167 Cr.P.C., the Magistrate is empowered to authorise the detention of the accused person in judicial custody beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but the Magistrate shall not authorise the detention of the accused person in custody under this paragraph for a total period exceeding ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. This Proviso makes it clear that the Magistrate cannot authorise the detention of the accused person in custody of the police beyond a period of fifteen days.

In the instant case, the petitioner was in judicial custody and on 13.10.2006 the accused was not produced by the jail authorities, and production warrants were issued for 27.10.2006. On 27.10.2006, the accused was produced and his judicial custody was further extended up to 10.11.2006, which was less than ninety days period. In my opinion, when the judicial custody of the petitioner was further extended by the Magistrate up to 10.11.2006, it impliedly shows that the explanation was given to the court by stating the reasons though not expressly stated.

Counsel further argued that on merits, the petitioner is also entitled for bail because the FIR was lodged after a delay of 60 days. In view of the direct allegations of committing rape by the complainant, I do not find any ground to grant regular bail to the petitioner at this stage.

Dismissed.

November 28, 2006
vkg

(SATISH KUMAR MITTAL)
JUDGE